IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.38 OF 1997
Date of decision:3.11.2006

Commissioner of Income tax, Amritsar

....Petitioner

versus

Shri Ashwani Kumar Garg, Rampuraphul

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'the Tribunal') arising out of its order dated 21.7.1997 in ITA Nos.281(ASR)/1995 and 64(ASR)/1997 in respect of assessment year 1988-89:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting whole of the addition of Rs.80,000/- sustained by the DCIT(A), Jalandhar treating the credit worthiness of the donor/creditors to denote/lend the amount to the assessee and transaction of gift and loan is genuine?"

The assessee derives income from purchase and sale of gold ornaments. He claimed to have received two gifts of Rs.20,000/- each from Manohar Lal and Smt.Anju Rani, apart from a loan of Rs.40,000/- from Smt.Anju Rani. The assessee was asked to produce the donor and the loaner. The assessee produced them. The assessing Officer disbelieved the statement of Manohar Lal on the ground that he was earlier clerk in a Bank and had no source of income and it was beyond his capacity to make a gift

nor there was justification for him for doing so as he was not related to the assessee but claimed to be his friend. Statement of Smt.Anju Rani was also disbelieved. She claimed to be having income from stitching. It was held that huge amount of Rs.40,000/- could not be given by way of loan. She was a house wife. Source of gift and loan were disbelieved. On appeal, the CIT (A) confirmed the additions. On further appeal, the Tribunal restored the matter to DCIT(A) to decide the issue in respect of two gifts after supplying copies of statements of donors to the assessee. The DCIT(A) again decided the issues against the assessee. The Tribunal set aside the view taken by the DCIT(A) and held that Anju Rani, creditor and donor was income tax assessee; she also had share of income from M/s. P.Bansal Trading Company; she had given gift and loans through cheques. The Tribunal also believed the statement of Manohar Lal who was a bank employee and had Income from salary.

We have heard learned counsel for the revenue.

The finding recorded by the Tribunal is primarily a finding of fact. It has not been shown that the reasons given by the Tribunal are, in any manner, irrelevant or non-existent. Nothing could be pointed out which could enable this Court to hold that the view taken by the Tribunal was not a possible view in the facts of the case. The finding cannot be held to be perverse.

The question referred is, thus, answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 3, 2006
'gs'

(Rajesh Bindal)
Judge